IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

MFA.No. 1102 of 2001(C)

OPMV. 304/1993 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR
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APPELLANT/PETITIONER
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1. **SAJITHA, W/O. LATE ABDUL RAZAK,**
   THERUVATH VEETTIL, GANESHAMANGLAM BEACH,
   THRISSUR DIST.

2. **RENCY RAZAK, AGED 15 YRS, REP. BY HER MOTHER AND**
   NATURAL AND LEGAL GUARDIAN SAJITHA,
   W/O. LATE ABDUL RAZAK, THERUVATH VEETTIL,
   GANESHMANGALAM BECH, THRISSUR DIST.

3. **SHAHANA RAZAK, AGED 12 YRS, REP. BY HER**
   MOTHER NATURAL AND LEGAL GUARDIAN
   SAJITHA, W/O. LATE ABDUL RAZAK, THERUVATH VEETTIL,
   GANESHMANGALAM BEACH, THRISSUR DIST.

BY ADV. SMT.M.A.VAHEEDA BABU
SRI.M.A.ABDUL HAKHIM

RESPONDENTS:
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1. **SATHEESAN, S/O. GOPALAN,**
   POYYARA HOUSE, ATHMAVU,
   WEST VEMBALLOOR,
   SRINARAYANA PURAM (DIED)

2. **M.A. MOHAMMADALI, S/O. ABDUL KHADER,**
   MATHILAKATH VEETIL, KANDAMKULAM P.O.,
   KODUNGALLOR.

3. UNITED INDIA INSURANCE CO.,
NORTH PARAVUR BRANCH,
NORTH PARAVUR.

R3 BY ADV. SMT.NARAYANIKUTTY CHETTOOR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 1102 of 2001

Dated this the 31st day of October, 2007

Judgment

Koshy,J.

A ten year old boy died in a motor accident when she along with his mother and sisters were travelling in a taxi car. The tribunal found that the accident occurred due to the negligence of the driver of the offending vehicle insured by the third respondent insurance company. However, against a claim of compensation of Rs.3,50,000/-, only Rs.96,000/- was awarded with 12% interest from 22.10.1993 till 31.10.1994 and from 16.12.1997 till the date of deposit. Denial of interest for the above period was because the case was dismissed for default and subsequently only, it was restored. Quantum of compensation is disputed vehemently by the appellant.

2. The deceased was aged only ten years at the time of accident. He was a non-earning person. However, he was the only male child of the appellants. Mother was aged 30 and father was 35. It is submitted that due to the death of the only son, even though father, mother and sisters filed claim petition, father died

during the pendency of the claim petition. It is further contended that mother and sisters had hopes on this male child. Because of the untimely death of the father due to the shock, they are completely hapless and, therefore, compensation awarded was very low. Even going by the second schedule, for death of a child, Rs.15,000/- can be taken as the annual notional income and one-third has to be deducted. Therefore, for calculating the compensation yearly loss can be taken as Rs.10,000/- and 15 is the multiplier as per the second schedule. A three-member Bench of the Apex Court in Smt. Supe Dei and others v. M/s. National Insurance Company Ltd. and another (JT 2002 Supp.1 SC 451) has held that even though claim is under section 166 of the Motor Vehicles Act, second schedule should be considered as a guideline for calculating compensation and only in exceptional circumstances it can be varied. A similar view was taken by the Apex Court in Abati Bezbaruah v. Deputy Director General, Geological Survey of India and another ((2003) 3 SCC 148) and reasonably in A.P.S.R.T.C. v. M. Pentaiah Chary (2007 AIR SCW 5689). Therefore, compensation payable for the death of the child will be Rs.1,50,000/-. It was argued that under second schedule, if compensation is calculated under section 163-A, amount will be Rs.2,00,000/- for the death of a child below 15 years. In 163-A

negligence of the driver of the offending vehicle need not be proved. But, under section 166, claimant has to prove the negligence of the driver. Hence, compensation cannot be less than the one awarded under section 163-A. We are unable to accept the above contention. The tribunal has granted only Rs.40,000/- for the death of the child. So, if the above Rs.40,000/- is deducted, additional amount payable will be Rs.1,10,000/-. Other amounts granted are for treatment expenses, pain and suffering, loss of love and affection etc. The additional amount of Rs.1,10,000/- should be deposited by the third respondent insurance company with 7.5 % interest from the date of application (22.10.1993) till 31.10.1994 and thereafter from 16.12.1997 till the date of deposit over and above the decreed amount by the tribunal. 50% of the additional amount can be withdrawn by the first appellant and balance can be withdrawn by the second and third appellants in equal proportion.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1102 of 2001

Judgment

Dated:31st October, 2007